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Conditions of service for the ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Twenty-first report of the Advisory Committee on Administrative and Budgetary Questions on the programme budget for the biennium 2010-2011

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the conditions of service for the ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/64/635 and Corr.1). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, who provided additional information and clarification.

2. In paragraph 5 of his report, the Secretary-General indicates that the report was submitted in response to requests from the Presidents of the two Tribunals to bring to the urgent attention of the General Assembly the issue of the terms and conditions of the ad litem judges of the two Tribunals, in particular the issue of pension benefits. In its resolution 64/239, the General Assembly noted that the Secretary-General was conducting a review of conditions of service of ad litem judges at the International Criminal Tribunal for Rwanda and stated that it anticipated addressing the review at the first part of its resumed sixty-fourth session. The Advisory Committee notes, in this regard, that in section I, paragraph 8, of its resolution 63/259, the General Assembly decided that the emoluments, pensions and other conditions of service for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda would next be reviewed at its sixty-fifth session, including options for defined benefit and defined contribution pension schemes.

3. By its resolutions 1329 (2000) and 1431 (2002), the Security Council decided to establish pools of ad litem judges at the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, respectively, and

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also decided to amend the relevant articles of the Tribunals' statutes. As the Secretary-General indicates in paragraph 8 of his report, article 13 ter of the statute of the International Tribunal for the Former Yugoslavia provides that, during their four-year term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. Identical provisions applicable to the International Criminal Tribunal for Rwanda are set out in article 12 ter of its statute. In paragraph 9 of his report, the Secretary-General further indicates that article 13 quater (1) (a) of the statute of the International Tribunal for the Former Yugoslavia and article 12 quater (1) (a) of the statute of the International Criminal Tribunal for Rwanda provide that ad litem judges at both Tribunals shall benefit from the same terms and conditions of service mutatis mutandis as the permanent judges.

4. In paragraph 10 of his report, the Secretary-General notes that, by means of various resolutions, the Security Council has extended the terms of office of ad litem judges of both Tribunals beyond the maximum cumulative period of three years in order to assist the Tribunals in the implementation of their completion strategies (see, inter alia, Security Council resolutions 1705 (2006), 1717 (2006), 1877 (2009) and 1878 (2009)). As a result, by the time that the Tribunals complete their trials, a number of ad litem judges will have served for continuous periods of more than three years. A table showing the length of service of the ad litem judges currently serving at both Tribunals is provided in the annex to the present report.

5. The Advisory Committee was further informed, upon enquiry, that the Security Council had decided to extend the mandates of particular ad litem judges beyond the three-year maximum in order to avoid the possible need to restart trials or to replace an ad litem judge for the short amount of time remaining before the completion of a trial. At both Tribunals, the joining of multiple accused persons into a single trial, many of which involved ad litem judges, had resulted in trials lasting over three years. The Committee was also informed by representatives of the International Tribunal for the Former Yugoslavia that while such joinders had necessitated the extension of the terms of some ad litem judges, they had also led to significant savings and greater overall efficiency.

6. It is argued by both Tribunals that, since the period of service of ad litem judges will have exceeded three years and since they will have assumed the same responsibilities as the permanent judges, ad litem judges should be entitled to the same remuneration, benefits and allowances paid to the permanent judges. For those reasons, in paragraph 20 of his report, the Secretary-General states that, since the conditions of service applicable to the judges of the Tribunals are set and approved by the General Assembly, the Assembly may wish to decide to extend the pension scheme of the permanent judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to the ad litem judges.

7. In section IV of his report, the Secretary-General sets out the financial implications of a General Assembly decision to extend the pension scheme currently applicable to permanent judges of the two Tribunals (see paras. 15-17 of the report) to ad litem judges with more than three years' continuous service. The related annual budgetary requirements are estimated at $421,300 for the International Criminal Tribunal for Rwanda and $346,566 for the International Tribunal for the

Former Yugoslavia, based on the current terms of service of the ad litem judges. The Secretary-General notes that the additional requirements for the biennium 2010-2011 would be subject to the actual dates of completion of the judges' terms of service, and that the actual expenditures would be addressed in the context of the relevant performance reports.

8. It should be recalled that, following the Security Council's decision to establish a pool of ad litem judges at the International Tribunal for the Former Yugoslavia, the Advisory Committee pointed out that the limitation of service to a cumulative period of less than three years had the effect of preventing ad litem judges from reaching the three-year threshold after which they would be eligible for pension benefits. The Committee acknowledged, however, that it was conceivable, although highly unlikely, that circumstances could lead to a trial lasting long enough that the service of an ad litem judge would exceed three years. To cover that eventuality, the Committee recommended that the relevant letter of appointment should contain a proviso that, notwithstanding such a development, the consequential extension of service would not give rise to any additional entitlements or benefits other than those which already exist and which would be extended pro rata by virtue of the extension of service (see A/55/806, para. 14). The General Assembly, in its resolution 55/249, endorsed that recommendation and, upon enquiry, the Advisory Committee was informed that the aforementioned proviso had been included in all letters of appointment signed by ad litem judges at both Tribunals.

9. In the Advisory Committee's view, a number of issues should be borne in mind by the General Assembly when it considers this matter. The first of these is the question of eligibility as it relates to length of service. In this connection, the Advisory Committee points out that the statute of neither the International Tribunal for the Former Yugoslavia nor the International Criminal Tribunal for Rwanda explicitly disqualifies ad litem judges from receiving pension benefits. Under the relevant pension scheme regulations, judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda who have ceased to hold office and have reached the age of 60 are entitled, during the remainder of their lives, to a retirement pension provided that they have completed at least three years of service (see General Assembly resolution 58/264, annexes II and III). It is the limitation of service of ad litem judges to a cumulative period of less than three years that has had the effect of preventing them from becoming eligible for pension benefits. However, following the decisions of the Security Council referred to in paragraph 4 above, a number of ad litem judges of both Tribunals have now served for cumulative periods in excess of three years. In this respect, those individuals could, in accordance with the aforementioned pension scheme regulations, be eligible for pension benefits.

10. The General Assembly may also wish to bear in mind the issues raised in paragraph 3 of the Secretary-General's report (A/64/635). In that paragraph, the Secretary-General states that, according to the President of the International Criminal Tribunal for Rwanda, the workload of the ad litem judges is identical to that of the permanent judges and that their responsibilities are nearly identical. The President therefore notes that the continued differences in the terms and conditions of service of the permanent and the ad litem judges are no longer justified and should be addressed in the interest of both equity and the successful implementation of the completion strategy.

11. Upon enquiry, the Advisory Committee was informed that, at the International Criminal Tribunal for Rwanda, the differences in the employment conditions of the permanent and ad litem judges were those described in article 12 quater (2) of the Tribunal's statute, namely that ad litem judges were not eligible for election as, or to vote in the election of, the President of the Tribunal or the Presiding Judge of a Trial Chamber; nor did they have power to adopt rules of procedure and evidence, review an indictment or consult with the President of the Tribunal in relation to the assignment of judges or in relation to a pardon or commutation of sentence. With respect to the International Tribunal for the Former Yugoslavia, the Advisory Committee was informed that there were many responsibilities that only the permanent judges were authorized to undertake, such as contempt cases, applications from domestic jurisdictions for access to confidential information and appeals proceedings.

12. The Advisory Committee was further informed by the International Criminal Tribunal for Rwanda that the General Assembly's original decision to withhold certain entitlements and allowances from the ad litem judges (pension benefits, relocation allowance and education grant) was based on the mutatis mutandis clause in article 12 quater (1) (a) of its statute (see para. 3 above). At that time, the Assembly endorsed the Advisory Committee's recommendation that, by virtue of the limitation on their length of service, ad litem judges should not be eligible for certain entitlements and allowances available to the permanent judges (see A/55/806, paras. 7-15, and General Assembly resolution 55/249). In determining whether the existing pension scheme for permanent judges should be extended to cover ad litem judges who have served continuously for more than three years, the General Assembly may wish to consider whether, given the changed circumstances of the Tribunals' operations (namely that the number of ad litem judges has been temporarily increased; several ad litem judges have been authorized by the Security Council to serve beyond the three-year maximum; and some Trial Chambers have been split into sections which may consist only of ad litem judges), the differences in the conditions of service of the two categories of judge continue to be justified.

13. With regard to the Tribunals' completion strategies, the Advisory Committee was informed, upon enquiry, that if an ad litem judge leaves the service of a Tribunal before the completion of the case to which he/she is assigned, a substitute judge may be appointed. The proceedings may recommence only when the substitute has certified that he/she has familiarized him/herself with the record of the proceedings. Only one such substitution may be made during a hearing. The need for a second substitute would require the case to be reheard from the beginning.

14. The foregoing explanation suggests that the departure of ad litem judges before the conclusion of the cases that they are hearing could delay the proceedings and therefore affect the ability of the Tribunals to complete their work on time. The report of the Secretary-General, however, contains no indication that, if the General Assembly were to retain the current terms and conditions of service, ad litem judges who have exceeded or will soon exceed the three-year period would resign before the completion of their cases.

15. **Given the differences in a number of conditions of service of the ad litem and the permanent judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the Advisory**

Committee is of the view that it would be most appropriate to consider the matter of pension benefits for the ad litem judges in the context of the wider review of the emoluments, pensions and other conditions of service for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to be conducted by the General Assembly at its sixty-fifth session.

Annex

Length of service of ad litem judges currently serving at the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Judge	*Date term began*	*Date term ends (projected)*	*Completed years of service as at end of term*
International Tribunal for the Former Yugoslavia			
Judge A	15 December 2008	30 August 2012	3 years 8 months
Judge B	27 February 2008	30 September 2010	2 years 7 months
Judge C	3 March 2008	30 June 2011	3 years 3 months
Judge D	8 January 2007	31 March 2011	4 years 2 months
Judge E	3 March 2008	30 June 2010	2 years 3 months
Judge F	2 July 2007	30 August 2012	5 years 1 month
Judge G	25 April 2006	31 January 2011	4 years 9 months
Judge H	15 December 2009	28 February 2011	1 year 2 months
Judge I	27 February 2008	30 June 2011	3 years 4 months
Judge J	3 April 2006	31 January 2011	4 years 9 months
Judge K	3 July 2006	31 March 2010	3 years 8 months
Judge L	11 July 2006	28 February 2010	3 years 7 months
Judge M	3 April 2006	31 January 2011	4 years 9 months
International Criminal Tribunal for Rwanda			
Judge 1	27 January 2009	31 December 2010	1 year 11 months
Judge 2	24 October 2003	31 December 2010	7 years 2 months
Judge 3	31 August 2003	31 December 2010	7 years 4 months
Judge 4	11 September 2004	31 December 2010	6 years 3 months
Judge 5	1 May 2007	31 December 2010	3 years 8 months
Judge 6	10 September 2004	31 December 2010	6 years 3 months
Judge 7	7 January 2009	31 December 2010	1 year 11 months
Judge 8	22 October 2003	31 December 2010	7 years 2 months
Judge 9	10 September 2004	31 December 2010	6 years 3 months
Judge 10	24 January 2009	31 December 2010	1 year 11 months
Judge 11	20 March 2004	31 December 2010	6 years 9 months